

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AMMAR HARRIS,

Plaintiff

v.

STEVEN SISOLAK, et al.,

Defendants

Case No. 2:22-cv-01058-GMN-BNW

ORDER ON MOTION FOR
RECONSIDERATION
(ECF No. 9)

I. DISCUSSION

On January 9, 2023, this Court entered a screening order that dismissed all of Plaintiff's claims in his first amended complaint but granted Plaintiff leave to amend on his Fourteenth Amendment due process claim based on an intentional, authorized deprivation of property. (ECF No. 8 at 10). The Court granted Plaintiff 30 days to file a second amended complaint. (*Id.* at 10-11). Instead of filing a second amended complaint, Plaintiff filed a motion for reconsideration asserting that his due process claim was based on an intentional, unauthorized deprivation of property. (ECF No. 9 at 1).

A motion to reconsider must set forth "some valid reason why the court should reconsider its prior decision" and set "forth facts or law of a strongly convincing nature to persuade the court to reverse its prior decision." *Frasure v. United States*, 256 F.Supp.2d 1180, 1183 (D. Nev. 2003). Reconsideration is appropriate if this Court "(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Sch. Dist. No. 1J v. Acands, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). "A motion for reconsideration is not an avenue to re-litigate the same issues and arguments upon which the court already has ruled." *Brown v. Kinross Gold, U.S.A.*, 378 F.Supp.2d 1280, 1288 (D. Nev. 2005).

The Court has reread Plaintiff's allegations and its prior screening order and grants the motion for reconsideration. In reexamining Plaintiff's Fourteenth Amendment due

1 process claim, the Court finds that it could liberally construe Plaintiff's allegations as
2 stating that prison officials changed state policy or law to increase the amount of
3 restitution that it could deduct from Plaintiff's account after he received stimulus
4 payments. In other words, Plaintiff asserts that prison officials engaged in an authorized,
5 intentional deprivation of his monetary property. See *Hudson v. Palmer*, 468 U.S. 517,
6 533 (1984); *Quick v. Jones*, 754 F.2d 1521, 1524 (9th Cir. 1985). This claim will now
7 proceed against Defendants Steven Sisolak, Barbara Cegavske, Charles Daniels,
8 William Reubart, and Calvin Johnson because they are the officials who allegedly
9 changed the state policy or law and authorized the higher deductions. See *Taylor v. List*,
10 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that "[a] supervisor is only liable for
11 constitutional violations of his subordinates if the supervisor participated in or directed the
12 violations, or knew of the violations and failed to act to prevent them. There is no
13 respondeat superior liability under [§]1983").

14 **II. CONCLUSION**

15 It is ordered that the motion for reconsideration (ECF No. 9) is granted.

16 It is further ordered that the operative complaint is the first amended complaint
17 (ECF No. 7).

18 It is further ordered that the Fourteenth Amendment due process property
19 deprivation claim regarding the monetary deductions from Plaintiff's inmate account to
20 pay restitution after receiving stimulus funds will proceed against Defendants Steven
21 Sisolak, Barbara Cegavske, Charles Daniels, William Reubart, and Calvin Johnson.

22 It is further ordered that all other claims remain dismissed from the first amended
23 complaint pursuant to the original screening order (ECF No. 8).

24 It is further ordered that given the nature of the claim(s) that the Court has
25 permitted to proceed, this action is stayed for 90 days to allow Plaintiff and Defendant(s)
26 an opportunity to settle their dispute before the \$350.00 filing fee is paid, an answer is
27 filed, or the discovery process begins. During this 90-day stay period and until the Court
28 lifts the stay, no other pleadings or papers may be filed in this case, and the parties will

1 not engage in any discovery, nor are the parties required to respond to any paper filed in
2 violation of the stay unless specifically ordered by the Court to do so. The Court will refer
3 this case to the Court's Inmate Early Mediation Program, and the Court will enter a
4 subsequent order. Regardless, on or before 90 days from the date this order is entered,
5 the Office of the Attorney General will file the report form attached to this order regarding
6 the results of the 90-day stay, even if a stipulation for dismissal is entered prior to the end
7 of the 90-day stay. If the parties proceed with this action, the Court will then issue an
8 order setting a date for Defendants to file an answer or other response. Following the
9 filing of an answer, the Court will issue a scheduling order setting discovery and
10 dispositive motion deadlines.

11 "Settlement" may or may not include payment of money damages. It also may or
12 may not include an agreement to resolve Plaintiff's issues differently. A compromise
13 agreement is one in which neither party is completely satisfied with the result, but both
14 have given something up and both have obtained something in return.

15 It is further ordered that if the case does not settle, Plaintiff will be required to pay
16 the full \$350.00 statutory filing fee for a civil action. This fee cannot be waived, and the
17 fee cannot be refunded once the Court enters an order granting Plaintiff's application to
18 proceed *in forma pauperis*. If Plaintiff is allowed to proceed *in forma pauperis*, the fee will
19 be paid in installments from his prison trust account. See 28 U.S.C. § 1915(b). If Plaintiff
20 is not allowed to proceed *in forma pauperis*, the full \$350 statutory filing fee for a civil
21 action plus the \$52 administrative filing fee, for a total of \$402, will be due immediately.

22 It is further ordered that if any party seeks to have this case excluded from the
23 inmate mediation program, that party will file a "motion to exclude case from mediation"
24 no later than 21 days prior to the date set for mediation. The responding party will have
25 7 days to file a response. No reply will be filed. Thereafter, the Court will issue an order,
26 set the matter for hearing, or both.


27 It is further ordered that if Plaintiff needs an interpreter to participate in the
28 mediation program, Plaintiff will file a notice identifying the interpretation language and

1 the need for the interpreter within 30 days from the date of this order.

2 It is further ordered that the Clerk of Court is further directed to add the Nevada
3 Department of Corrections to the docket as an Interested Party and electronically serve
4 a copy of this order, the original screening order (ECF No. 8), and a copy of Plaintiff's first
5 amended complaint (ECF No. 7) on the Office of the Attorney General of the State of
6 Nevada by adding the Attorney General of the State of Nevada to the interested party on
7 the docket. This does not indicate acceptance of service.

8 It is further ordered that the Attorney General's Office must advise the Court within
9 21 days of the date of the entry of this order whether it will enter a limited notice of
10 appearance on behalf of Interested Party for the purpose of participation in the Early
11 Mediation Program. No defenses or objections, including lack of service, will be waived
12 because of the filing of the limited notice of appearance.

13
14 DATED THIS 22 day of February 2023.

15
16 
17 _____
18 Gloria M. Navarro, Judge
19 United States District Court
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

AMMAR HARRIS,

Plaintiff

v.

STEVEN SISOLAK, et al.,

Defendants

Case No. 2:22-cv-01058-GMN-BNW

REPORT OF ATTORNEY GENERAL
RE: RESULTS OF 90-DAY STAY

NOTE: ONLY THE OFFICE OF THE ATTORNEY GENERAL WILL FILE THIS FORM. THE INMATE PLAINTIFF WILL NOT FILE THIS FORM.

On _____ [the date of the issuance of the screening order], the Court issued its screening order stating that it had conducted its screening pursuant to 28 U.S.C. § 1915A, and that certain specified claims in this case would proceed. The Court ordered the Office of the Attorney General of the State of Nevada to file a report ninety (90) days after the date of the entry of the Court's screening order to indicate the status of the case at the end of the 90-day stay. By filing this form, the Office of the Attorney General hereby complies.

REPORT FORM

[Identify which of the following two situations (identified in bold type) describes the case, and follow the instructions corresponding to the proper statement.]

Situation One: Mediated Case: The case was assigned to mediation by a court-appointed mediator during the 90-day stay. [If this statement is accurate, check **ONE** of the six statements below and fill in any additional information as required, then proceed to the signature block.]

_____ A mediation session with a court-appointed mediator was held on _____ [enter date], and as of this date, the parties have reached a settlement (even if paperwork to memorialize the settlement remains to be completed). (If this box is checked, the parties are on notice that they must **SEPARATELY** file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in the case until a specified date upon which they will file a stipulation of dismissal.)

_____ A mediation session with a court-appointed mediator was held on _____ [enter date], and as of this date, the parties have not

reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

____ No mediation session with a court-appointed mediator was held during the 90-day stay, but the parties have nevertheless settled the case. *(If this box is checked, the parties are on notice that they must SEPARATELY file a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)*

____ No mediation session with a court-appointed mediator was held during the 90-day stay, but one is currently scheduled for _____ [enter date].

____ No mediation session with a court-appointed mediator was held during the 90-day stay, and as of this date, no date certain has been scheduled for such a session.

____ None of the above five statements describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

Situation Two: Informal Settlement Discussions Case: The case was NOT assigned to mediation with a court-appointed mediator during the 90-day stay; rather, the parties were encouraged to engage in informal settlement negotiations. [If this statement is accurate, check **ONE** of the four statements below and fill in any additional information as required, then proceed to the signature block.]

____ The parties engaged in settlement discussions and as of this date, the parties have reached a settlement *(even if the paperwork to memorialize the settlement remains to be completed)*. *(If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)*

____ The parties engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

____ The parties have not engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

_____ None of the above three statements fully describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

Submitted this _____ day of _____, _____ by:

Attorney Name: _____	_____
Print	Signature

Address: _____	Phone: _____
_____	_____
	Email: _____